HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.30580 OF 1998

Between:
P.Emanuel .... Petitioner

And

The Presiding Officer,
Additional Labour Court,
Hyderabad and another. ....Respondents

:: O R D E R ::

Counsel for the Petitioner : SriV.Mallik

Counsel for Respondent No.2 : Sri K.Madhava Reddy
Standing Counsel for APSRTC.

19th September, 2007

In this petition, the petitioner has prayed for quashing award

dated 24.2.1996 passed by the Presiding Officer of Additional Industrial Tribunal-cum-Labour Court, Hyderabad (hereinafter described as the Labour Court) in I.D.No.102 of 1994.

The petitioner joined the service of the Andhra Pradesh State Road Transportation Corporation (for short, 'the Corporation') as Driver in 1986. On 29.10.1989, the vehicle bearing No. AAZ 7643 driven by the petitioner met with an accident, which resulted in death of a pedestrian. The Enquiry Committee comprising of Depot Managers of Secunderabad and Ranigunj Depots, which conducted an inquiry into the cause of accident took cognizance of the fact that Crime No.344 of 1989 was registered by the police under Section 337 IPC and opined that the evidence available on record indicated rash and negligent driving of the vehicle by the petitioner. Thereafter, a regular departmental enquiry was instituted against the petitioner on the following charges.

> "Charge-1: For having caused accident to the vehicle No. AAZ 7634 due to lack of anticipation and negligent driving while performing duty on route No.10 near ESI Hospital on 29.10.1989 resulting in one pedestrian sustained serious injuries to his head which constitutes misconduct under Regulation 28(ix)(a) of APSRTC Employees Conduction Regulations 1963.
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> Charge-2: For having driven the vehicle without observing road sense due to which the accident occurred resulting 44 kms were cancelled thereby loss of revenue to the corporation which constitutes misconduct under Regulation 28(i) of APSRTC Employees Conduct Regulations, 1963.
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> Charge-3: For causing this sort of accident due to rash & negligent driving while performing duty the image of the Corporation is badly tarnished among the public besides causing inconvenience to the traveling public which constitutes misconduct under Regulation 28(xxxi) of APSRTC Employees (conduct) Regulations, 1963".

The Enquiry Officer considered the oral as well as documentary evidence and submitted report dated 10.11.1989 with the finding that charge Nos.1 and 2 have been proved against the delinquent. The disciplinary authority i.e. the Depot Manager, Secunderabad accepted the enquiry report and passed order dated 29.6.1990 whereby the petitioner was removed from service.

The petitioner challenged his removal from service by filing an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act' as amended by Andhra Pradesh Act No.32 of 1987). In the statement of claim filed before the Labour Court, the petitioner pleaded that the order of punishment is vitiated due to bias inasmuch as the disciplinary authority had already formed an adverse opinion against him but at the hearing of the case, counsel appearing on his behalf filed a memo dated 6.1.1996 and gave up the challenge to the fairness of the domestic enquiry.

The learned Presiding Officer considered the factual matrix of the entire case and concluded that the finding recorded by the Enquiry Officer that the accident was due to rash and negligent driving of the vehicle by the petitioner is based on correct appreciation of evidence and that the doctrine of proportionality enshrined in Section 11-A of the Act cannot be invoked for modifying the punishment imposed by the disciplinary authority. Accordingly, he passed award dated 24.2.1996 and rejected the petitioner's prayer for reinstatement.

Sri V.Mallik, learned counsel for the petitioner relied on the judgments of the Supreme Court in **U.P.State v. Mohd.Nooh**[1], **Basheshar Nath v. I.T.Commissioner**[2], **Olga Telis v. Greater Bombay Municipal Corporation**[3] and of the learned Single Judge of this Court in **Md. Hasson v. Presiding Officer, Labour Court-1**

Hyderabad[4] and argued that even though the counsel appearing on behalf of his client before the Labour Court gave up challenge to the fairness of the enquiry, the petitioner cannot be estopped from challenging the award on the ground that the punishment of removal from service is vitiated due to departmental bias. Learned counsel submitted that as a member of Accident Enquiry Committee, the disciplinary authority has pre-judged the petitioner's guilt and, therefore, he could not have exercised the power of the disciplinary authority. Sri Mallik then submitted that even though the Enquiry Officer did not rely on the report of the Accident Enquiry Committee, this Court should draw an inference of bias because the fact finding recorded by the Accident Enquiry Committee must have influenced the consideration made by the disciplinary authority at the time of imposing the punishment of removal from service. Sri Mallik then argued that the punishment of removal from service was extremely harsh and palpably unjust and the learned Presiding Officer gravely erred by declining to exercise power vested in him under Section 11-A of the Act.

Sri K.Madhava Reddy supported the award and argued that after having expressly given up his challenge to the fairness of the enquiry, the petitioner cannot turn around and resurrect the plea of bias and seek its adjudication for the first time in the writ petition filed under Article 226 of the Constitution of India. The learned counsel further argued that the Enquiry Officer had independently examined the oral as well as the documentary evidence produced during the enquiry and found the petitioner guilty and as the findings and conclusions recorded in the enquiry report are not based on the report of the Accident Enquiry Committee, the order of punishment cannot be quashed on the ground of violation of the rules of natural justice.

I have considered the respective submissions. The High Court's power of judicial review of disciplinary action taken by the public authorities against the delinquent employee is extremely limited. The Court can nullify the punishment if the enquiry is found to be vitiated due to violation of the rules of natural justice or rules regulating the enquiry and such violation is shown to have prejudiced the cause of delinquent. Another ground on which the Court can annul the action taken by the employer is the perversity of finding recorded by the Enquiry Officer. The Court can also interfere with the discretion exercised by the employer in the matter of imposition of penalty if it is found that the punishment is shockingly disproportionate to the misconduct found proved or is palpably arbitrary or unjust. However, a writ of certiorari cannot be issued for correcting an error of fact or even an error of law unless it is shown that the order or award impugned in the writ petition is vitiated by an error of law apparent on the face of the record – **Syed Yakoob v. K.S. Radhakrishnan and others**[5], **Shaik Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[6], **R.S. Saini v. State of Punjab and others**[7], **Mohd. Shahnawaz Akhtar and another v. I ADJ Varanasi & ors.**[8] and **Surya Dev Rai v. Ram Chander Rai** [9].

In the light of the above principles, I shall now consider whether the Presiding Officer of the Labour Court committed an error by declining to entertain the appellant's challenge to the order of punishment. However, before dealing with the arguments of the learned counsel for the petitioner, I consider it appropriate to notice that Section 11-A was added with effect from 14.10.1971 in the backdrop of the judgment of the Supreme Court in **M/s. Indian Iron and Steel Company v. Their workmen**[10]. The

Parliament felt that the adjudicatory forums constituted under the Act should be invested with the statutory power not only to examine the merits of the action taken by the employer against the employee but also interfere with the employer's prerogative to impose the punishment on an employee found guilty of misconduct. The newly added section was considered by the Supreme Court in **The Workmen of M/s. Fire Stone Tyre & Rubber Co. of India Private Limited v. The Management and others**[11] after extensive reference to the historical background in which Section 11-A was insulted, a Division Bench of the Supreme Court held:

"(i) The position before the introduction of Section 11-A in the Industrial Disputes Act was that the right to take disciplinary action and to decide the quantum of punishment was regarded as managerial function but the employees were expected to conduct proper enquiries in accordance with the standing orders and if in that case the finding was plausible conclusion from the evidence, the Tribunal had no jurisdiction to interfere. Even if no enquiry was held, the parties could adduce evidence before the Industrial Tribunal but in that case the Industrial Tribunal had to decide on the evidence adduced before it whether the misconduct had been established and the point regarding the exercise of managerial function did not arise. In view of this, the Industrial Tribunal had no power to straight-away order reinstatement if the enquiry is held to be improper or no enquiry was held but in that case the employer should ask for an opportunity to lead evidence at an appropriate stage. If the misconduct is established either by managerial enquiry or by evidence before Industrial Tribunal, the punishment cannot be interfered with except when it is so harsh as to suggest victimisation. If the dismissal order is set aside, then whether workers should be reinstated or paid compensation was within the discretion of the Industrial Tribunal.

(ii) In construing the provisions of a welfare legislation, courts should adopt beneficent rule of construction i.e., if two constructions are reasonably possible then the construction which furthers the policy and object of the Act and is more beneficial to the employees has to be preferred to achieve the legislative purpose provided it is possible to do so without doing violence to the language used by the Legislature and also keeping in view as to what was the previous position of law and to what extent the section exhibits

intention to change the same.

(iii) Under Section 11-A of the Industrial Disputes Act, the Tribunal is now clothed with the power to reappraise the evidence and satisfy itself whether the evidence establishes the misconduct."

The propositions, which can be culled out from the above noted judgment, are that the Labour Court, Tribunal or National Tribunal can examine the fairness of the domestic enquiry in the context of the workmen's plea of violation of the different facets of the rules of natural justice. Even if the domestic enquiry is found to be fair and proper, the Labour Court, Tribunal etc., can examine the correctness of the findings recorded by the Enquiry Officer and upset the same if it is found that the conclusion reached by the Enquiry Officer is based on no evidence or is vitiated due to the influence of extraneous consideration or factors. If the finding on those issues is in favour of the employer, then too the adjudicating authority can tinker with the discretion exercised by the employer in the matter of imposition of punishment if it is convinced that the punishment is totally arbitrary, unreasonable or disproportionate to the misconduct found proved against the delinquent.

In the present case, I find that the petitioner was punished for a proved act of misconduct viz., rash and negligent driving of the vehicle of the Corporation on account of which the accident occurred and a pedestrian was killed. Admittedly, the accident occurred within three years of the petitioner's joining the service. The Enquiry Officer evaluated the evidence produced before him and held that charges No.1 and 2 are proved. The learned Presiding Officer of the Labour Court independently analysed the evidence and held that the finding recorded by the Enquiry Officer that the accident was caused due to rash and negligent driving of the bus by the petitioner is correct.

Paragraphs 6, 7 and 8 of the award, which contain the discussion on the subject, read as under:

"6. **POINT:**- The admitted facts, as revealed from the evidence on record, are as follows: The petitioner P. Emanuel is a Driver in Andhra Pradesh State Road Transport Corporation, Hyderabad. During October, 1989, the petitioner was working in Ranigunj-II Depot. On 29-10-1989 the petitioner was driving the bus bearing No. AAZ 7634 on Route 98/2 proceeding towards Sanathnagar from Secunderabad. At about 18.25 hours, while the bus was proceeding near E.S.I. Traffic Police Station, the bumper of the bus hit the pedestrian by name Durgappa who was crossing the road with his wife and other family members. The pedestrian Durgappa, due to impact of the bus, fell down on the road and sustained injuries. He was immediately shifted to Gandhi Hospital for treatment. The petitioner stopped the bus at the place of accident and went to the Police Station. Crime No.344/89 under Section 337 Cr.P.C. was registered in Sanjeevareddynagar Police Station with regard to the said accident and it was investigated upon. The injured Durgappa succumbed to the injuries in the hospital on 10-11-1989. Thereafter, the section of law has been altered to Section 304-A in the First Information Report. The police also charge sheeted the petitioner in the Court of Vth Metropolitan Magistrate, Hyderabad in C.C.no.134/91 and it culminated in acquittal. Ex.W-1 is the xerox copy of the judgment in C.C.no.134/91 on the file of V Metropolitan Magistrate, Hyderabad.

The Traffic Inspector M.A. Qurashi on receiving the information with regard to the accident, visited the place of accident. He also visited the Gandhi Hospital where the injured was admitted. He also drafted a sketch of the scene of accident (Ex.M1) on 10-10-1989 in the presence of the service conductor of the bus and the driver. He also recorded the statement of the wife of the injured and also the statement of the service conductor and submitted his report with regard to the accident to the Depot Manager. Ex.M.2 is the statement of Narayanamma wife of the deceased. Ex.M.3 is the statement of the service conductor M. Venkateswarlu. Ex.M.4 is the statement of the petitioner with regard to the accident. The Senior Inspector P. Prabhakar also visited the scene of accident and conducted preliminary enquiry and submitted his enquiry report (Ex.M5) to the respondent. As there was prima facie evidence that the petitioner has caused the accident by his rash and negligent driving of the bus AAZ 7634, the respondent placed the petitioner under suspension by his order dt. 10-11-1989 (Ex.M.7) against the petitioner. The charges that are framed against the petitioner are as

follows:-

CHARGE – 1 For having caused accident to the vehicle No. AAZ 7634 due to lack of anticipation and negligent driving while performing duty on route No.10 near ESI Hospital on 29-10-1989 resulting in one pedestrian sustaining serious injuries to his head which constitutes misconduct under Regulation 28 (ix)(a) of APSRTC Employees Conduct Regulations 1963.

CHARGE - 2 For having driven the vehicle without observing road sense due to which the accident occurred resulting 44 Kms. were cancelled thereby loss of revenue to the Corporation which constitutes misconduct under Regulation 28(xii) of APSRTC Employees Conduct Regulations 1963.

CHARGE – 3 For causing this sort of accident due to rash and negligent driving while performing duty the image of the Corporation is badly tarnished among the public besides causing inconvenience to the travelling public which constitutes misconduct under Regulation 28(xxxi) of APSRTC Employees (Conduct) Regulations, 1963.

The petitioner was asked to submit explanation to the said charge sheet within 7 days from the date of receipt of the charge sheet. Under Ex.M8 dt.11-12-1989 the petitioner submitted his explanation denying the charges. The respondent, having not been satisfied with the explanation offered by the petitioner, ordered for a detailed enquiry and appointed enquiry officer to conduct the enquiry. The enquiry officer during the course of enquiry, examined M.A. Qureshi, Traffic Inspector, P. Prabhakar, Senior Traffic Inspector, Service Conductor, M. Venkateswarlu in the presence of the petitioner and they are cross examined by the petitioner. Exs.M9, M10 and M11 are the statements of the said witnesses recorded by the enquiry officer. The petitioner got himself examined on his behalf and his statement (Ex.M12) was also recorded. The enquiry officer on a consideration of the oral and documentary evidence placed before him, submitted the report (Ex.M13) dt.30-4-1990 holding all the three charges as proved. On a consideration of the enquiry report and other material on record, the respondent Depot Manager issued a show cause notice of removal from service, original of Ex.M.14 dt.24-5-1990. The petitioner submitted his explanation under Ex.M15 dt.4-6-1990 to the said show cause notice. The respondent after considering the said explanation of the petitioner, passed the order in his proceedings dt.29-6-1990 (Ex.M16) imposing the punishment of removal from service. Aggrieved by that order of removal, the petitioner preferred an appeal. The Divisional Manager, Secunderabad by his proceeding dt.13-12-1990 (Ex.M17) dismissed the said appeal.

Now the petitioner has come up with this petition to set aside the said

order of removal from service passed against him by the respondent under Ex.M16.

7. As seen from the records, the petitioner-workman has not challenged the validity of the domestic enquiry held against him in this case. The learned counsel for the petitioner-workman also filed a Memo dt.6-1-96 to decide the matter under section 11-A of the I.D.Act. Thus the counsel for the petitioner-workman has categorically conceded that he is not challenging the domestic enquiry proceedings. When once the validity of the domestic enquiry is not challenged by the workman, the jurisdiction of this Tribunal is limited and normally it cannot interfere with the findings of the enquiry officer in the domestic enquiry. But it is well settled that Industrial Tribunal can interfere with findings of the enquiry officer only when the findings are nor based on legal evidence such as no reasonable person could have arrived at on the basis of material before it i.e., in the words, when the findings is treated as perverse vide M/s Bharat Iron Works v. Bagubai Ballubhai Patel (1976 (1) S.C.Cases page 518). Under Section 11-A of the Act even in a case where the Tribunal upholds the findings of misconduct recorded by the Management at the domestic enquiry. The Tribunal can interfere with the punishment awarded by the Management and alter the same. It is appears to the Industrial Tribunal that the ultimate order of punishment passed against the workman is so disproportionate, severe in relation to the misconduct proved, and that it may lead to inference of victimization, the Industrial Tribunal would be justified in interfering with that order of punishment. In the case of victimization of an unfair labour practice. It is open to the Industrial Tribunal to go into the merits of the case and to investigate whether the order of punishment is justified. But in exercising the discretionary power conferred on the Tribunal by Section 11-A to interfere with the punishment, the discretion should not be exercised in an arbitrary manner and it should be exercised in a judiciary manner. Before interfering with the punishment imposed by the Management, the Tribunal must take into consideration all the relevant facts and can interfere with the punishment imposed by the Management only it would come to the conclusion that the punishment imposed is extremely harsh and unjust and wholly disproportion to the misconduct proved. The arbitrary punishment impose by the Tribunal, however, should not amount to absolving the employees of misconduct or make the punishment merely illusory and allow the employee to got scot-free particularly when the charges are found to be grave in nature. Vide APSRTC v. Additional Industrial Tribunal-cum–Labour Court (1983 –63 FJR page 230). It is also a well recognized principle of jurisprudence which

permits penalty to be imposed for misconduct that the penalty imposed be commensurate with the gravity of the charge. The Tribunal may award lesser punishment if it is of the opinion that the proved misconduct does not merit punishment by way of discharge or dismissal. It is also well settled that leniency can only depend upon the nature of the misconduct alleged against the workman and not on the question as to whether the workman is married or that he has put in a particular length of service.

8. In the instant case, the proved misconduct on the part of the Driver-petitioner is that he caused the accident for the Bus AAZ 7634 on 29-10-1989 at 18.25 hours near the E.S.I. Traffic Control and caused injuries to the pedestrian Durgappa who was crossing the road along with his family members. The injured Durgappa who was admitted in Gandhi Hospital for treatment succumbed to the injuries on 10-11-1989 A case in Crime No.344/89 was registered in Police Station, Sanjiva- reddynagar under Section 337 IPC and that section of law has been altered to Section 304-IPC subsequent to the death of the injured on 10-11-1989. Ex.M2 is the statement of Narayannamma, the wife of the deceased Durgappa. Ex.M1 is the sketch of the scene of accident drawn by the Traffic Inspector Qureshi. Senior Traffic Inspector also conducted the preliminary enquiry and submitted his report Ex.M5. During the enquiry, the enquiry officer examined the service conductor M.Venkateswarlu, Qureshi, Senior Traffic Inspector and also marked the documents. On a consideration of the evidence on record, the enquiry officer came to the conclusion that the charges levelled against the petitioner as proved. The witnesses examined during the course of enquiry were also cross examined by the petitioner. The petitioner-Driver also gave evidence before the enquiry officer and his statement was also recorded. All the charges have been held proved by the enquiry officer. A perusal of the findings recorded at the time of enquiry officer are perfectly correct. The enquiry officer has rightly held the charges as proved. There is nothing on record to show that the said findings of the enquiry officer are mala fide or perverse. Ex.M1 is the sketch of the scene of accident and it is proof positive for the rash and negligent driving of the bus by the petitioner. The skid marks are found for a distance of 12 feet. If really the petitioner was driving the bus at low speed on seeing the pedestrian crossing the road as contended by him, there would not have been skid marks of the bus for such a distance of 12 feet. Moreover, in his statement Ex.M4 he admits that the bumper of his bus dashed against the pedestrian Durgappa and on account of it he fell down. But in his statement before the Enquiry Officer

(Ex.M12) he deposed that his bus did not touch the pedestrian Durgappa and that Durgappa sustained injury due to falling on an uneven metal road. The explanation submitted by the petitioner that the accident had taken place as the pedestrian moved backward suddenly in response to the shout of his wife and it resulted in the accident cannot be accepted in view of the statement of the wife of the deceased under Ex.M2. The reasoning given by the enquiry officer for the conclusions drawn by him is perfectly correct and the enquiry officer has rightly held that the charges are proved. The respondent Depot Manager also rightly held the petitioner as guilty of the charges levelled against him."

Sri Mallik could not show that the concurrent findings recorded by the Enquiry Officer and the Presiding Officer of the Labour Court on the charges framed against the petitioner are perverse or are such that no person of reasonable prudence could have recorded on the basis of evidence produced during the enquiry.

The plea of bias, which was given up before the Labour Court and is now sought to be resurrected is liable to be rejected because,

1. The petitioner, through his counsel, filed memo dated 6.1.1996 before the Labour Court and expressly gave up his challenge to the fairness of the domestic enquiry. Therefore, it is not open to him to resurrect the plea of bias and seek the nullification of the award passed by the Labour Court on the premise that it did not consider the validity of domestic enquiry with reference to his plea that the disciplinary authority had prejudged the guilt.

2. Even if this Court was to allow the petitioner to re-agitate the plea of bias, I am convinced that he has failed to make out a case for interference by this Court. In the affidavit filed by him, the petitioner has neither pleaded nor any evidence has been produced either before the Labour Court or before this Court to show that the so called bias of the disciplinary authority had prejudiced his cause. In 1960's, 1970's and 1980's the Courts invalidated the disciplinary action taken

by the employer on the ground of violation of the rules of natural justice without going into the issue of prejudice. But this trend has been decisively reversed in last one decade and half. I n **Managing Director, ECIL v. B. Karunakar** [12] the Constitution Bench of the Supreme Court considered the question whether supply of enquiry report was sine qua non for imposing punishment even after 42 amendment of the Constitution. This question was considered by the Constitution Bench in the backdrop of two apparently conflicting judgments in **Union of India v. Mohd. Ramzan Khan**[13] and **Kailash Chander Asthana v. State of U.P.**[14]. The Constitution Bench approved the ratio of the judgment in Mohd.Ramzan Khan's case but made it applicable prospectively. The Supreme Court then considered whether non-supply of enquiry report will by itself be sufficient for vitiating the action taken by the employer and held that in such cases, the Court must insist on the proof of prejudice.

The same principle has been evolved and followed in the latter decisions, some of which are - **Janki Nath Sarangi v. State of Orissa**[15], **R.C.Sharma v. Union of India**[16], **Sunil Kumar Banerjee v. State of West Bengal**[17], **K.N. Tripathi v. State Bank of India**[18], **Mumtaz Hussein Ansari v. State of U.P.**[19], **Kashinath Dikshita v. Union of India**[20], **Chandrama Tiwari v. Union of India**[21], **Managing Director, ECIL v. B. Karunakar**[22], **Krishanlal v. State of Jammu and Kashmir**[23], **State Bank of Patiala v. S.K. Sharma**[24], **S.K. Singh v. Central Bank of India**[25], **State of Uttar Pradesh v. Shatrughanlal**[26], **Food Corporation of India v. Padamkumar Bhuvan**[27], **State of Uttar Pradesh v. Harendra Arora**[28], **Oriental Insurance Company v. S.**

Balakrishnan[29], **State of Uttar Pradesh v. Rameshchand Manglik**[30], **Canara Bank v. Debasis Das**[31], **Indra Bhanu Gaur v. Committee, Management of M.M Degree College**[32], **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick**[33], **Karnataka State Road Transport Corporation v. S.G. Kotturappa**[34], **Punjab National Bank v. Manjeet Singh**[35], **P.D. Agrawal v. State Bank of India**[36] and Civil Appeal No.4761 of 2006 – **Ashok Kumar Sonkar v. Union of India** decided on February 23, 2007.

3. Since the petitioner has not even raised the plea of prejudice and no evidence has been produced in support thereof, I do not find any justification to entertain the same.

4. It is also apposite to note that the concurrent findings recorded by the Enquiry Officer and the Labour Court are not based on the observations made by the Accident Enquiry Committee. Both the Enquiry Officer and the learned Presiding Officer of the Labour Court considered the evidence produced in the enquiry and held that charges No.1 and 2 levelled against the petitioner are proved. Therefore, the so-called bias of the disciplinary authority was inconsequential.

The applicability of the doctrine of proportionality

In **Ranjit Thakur v. Union of India**[37], the Supreme Court applied the 'doctrine of proportionality' and interfered with the discretion exercised by the employer to punish delinquent employee. Some of the observations made in that judgment are extracted below:

> "Judicial review generally speaking, is not directed against a

decision, but is directed against the “decision-making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.”

In **Union of India v. G. Ganayutham**[38], the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

“(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely

exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgent of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

In **State Bank of India v. Samrendra Kishore Endow**[39], **State of Uttar Pradesh v. Ashok Kumar Singh**[40], **State of Uttar Pradesh v. Nandkishore Shukla**[41], **State of Punjab v. Baxi Singh**[42], **Uttar Pradesh State Road Transport Corporation v. A.K. Parul**[43], **Union of India v. J.R. Gheman**[44], the Supreme Court disapproved invoking of the doctrine of proportionality by the High Courts.

In **Om Kumar v. Union of India**[45], the Supreme Court

considered the applicability of the ‘doctrine of proportionality' in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur v. Union of India** (supra)**, B.C. Chaturvedi v. Union of India**[46] and held:

> “1) In this context, we shall only refer to these cases. In **Ranjit Thakur v. Union of India** this Court referred to “proportionality” in the quantum of punishment but the Court observed that the punishment was “shockingly” disproportionate to the misconduct proved. In **B.C. Chaturvedi v. Union of India** this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in **Ganayutham**.”
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> 2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as “arbitrary” under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment.”

In **Regional Manager, U.P. SRTC v. Hoti Lal**[47], the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

> “The Court or tribunal while dealing with the quantum of

punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional."

(underlining is mine)

In **Director General, RPF v. Ch. Sai Babu**[48], the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

> "Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

The views expressed in the above noted cases have been reiterated in the recent judgments – **Hombe Gowda Educational**

Trust v. State of Karnataka[49], **Commissioner of Police v. Syed Hussain**[50], and **State of U.P. v. Sheo Shanker Lal Srivastava**[51].

By applying the ratio of the above noted judgments to the facts of this case, I hold that neither the doctrine of proportionality nor the Wednesbury rule can be invoked for upsetting the award passed by the Labour Court. In this connection, it is appropriate to mention that while driving the vehicle of the Corporation, the petitioner owed a duty to the road users to exercise greater care and caution. However, the fact of the matter is that he drove the vehicle in a rash and negligent manner and caused the death of a pedestrian within three years of his joining the service. Therefore, the disciplinary authority had rightly taken serious note of misconduct and removed him from service. There was no extenuating circumstance, which would justify imposition of a lesser penalty and, in our considered view, the learned Presiding Officer rightly declined to exercise his power vested in him under Section 11-A of the Act.

No other point has been argued.

In the result, the writ petition is dismissed.

G.S.SINGHVI, CJ

19.9.2007

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[1] AIR 1958 SC 86
[2] AIR 1959 SC 149
[3] AIR 1986 SC 180
[4] 2003(3) ALD 545
[5] **AIR 1964 SC 477**
[6] **AIR 1970 SC 61**
[7] **JT 1999 (6) SC 507**
[8] **JT 2002(8) SC 69**
[9] **2003(6) SCC 675**
[10] **AIR 1958 SC 130**
[11] AIR 1973 SC 1227
[12] **AIR 1994 SC 1074**
[13] **AIR 1991 SC 471**
[14] **AIR 1988 SC 1338**
[15] **(1969) 3 SCC 392**
[16] **(1976) 3 SCC 574**
[17] **(1980) 3 SCC 304**
[18] **(1984) 1 SCC 43**
[19] **(1984) 3 SCC 295**
[20] **(1986) 3 SCC 229**
[21] **(1987) Suppl. SCC 518**
[22] **(1993) 4 SCC 727**
[23] **(1994) 4 SCC 422**
[24] **(1996) 3 SCC 364**
[25] **(1996) 6 SCC 415**
[26] **(1998) 6 SCC 651**
[27] **(1999) SCC (L&S) 620**
[28] **(2001) 6 SCC 392**
[29] **(2003) 11 SCC 734**
[30] **(2003) 3 SCC 443**
[31] **(2003) 4 SCC 557**
[32] **(2004) 1 SCC 281**
[33] **(2005) 2 SCC 237**
[34] **(2005) 3 SCC 409**
[35] **(2006) 8 SCC 647**
[36] **(2006) 8 SCC 776**
[37] **(1987) 4 SCC 611**
[38] **(1997) 7 SCC 463**

[39] (1994) 2 SCC 537
[40] (1996) 1 SCC 302
[41] (1996) 3 SCC 750
[42] (1997) 6 SCC 381
[43] (1998) 9 SCC 416
[44] (1999) 6 SCC 403
[45] (2001) 2 SCC 386
[46] (1995) 6 SCC 749
[47] (2003) 3 SCC 605
[48] (2003) 4 SCC 331
[49] (2006) 1 SCC 430
[50] (2006) 3 SCC 173
[51] (2006) 3 SCC 276